LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
JUN 8 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term 1968

No. [redacted] 165

CALVARY BIBLE PRESBYTERIAN CHURCH OF SEATTLE,
a non-profit corporation;
TACOMA BIBLE PRESBYTERIAN CHURCH,
a non-profit corporation;
REV. THOMAS W. MILLER and REV. HAROLD WEBB,
Petitioners,

v.

BOARD OF REGENTS OF THE UNIVERSITY OF WASHINGTON,
Respondent.

PETITION FOR WRIT OF CERTIORARI
To the Supreme Court of the State of Washington

CARTANO, BOTZER AND CHAPMAN
WILLIAM H. BOTZER
Counsel for Petitioners
1300 IBM Building
Seattle, Washington 98101

CARTANO, BOTZER AND CHAPMAN
DOUGLAS J. SMITH
Counsel of Record
1300 IBM Building
Seattle, Washington 98101

METROPOLITAN PRESS — SEATTLE, WASH.

SUBJECT INDEX

	Page
References to the Record	2
Opinions Below	2
Jurisdiction	2
Questions Presented	3
Statutes and Constitutional Provisions Involved	3
Statement of the Case	4
1. Pleadings and Prior Proceedings	4
2. Stages at Which the Federal Questions Were Raised	5
3. Essential Facts	6
Reasons for Granting This Writ	9
Appendices:	
Appendix A	A-1
Appendix B	A-7
Appendix C	A-25
Appendix D	A-27
Appendix E	A-34

TABLES OF AUTHORITY

Table of Cases

Engel v. Vitale, 370 U.S. 421, 82A S.Ct. 1261 (1960).... 9

Everson v. Board of Education, 330 U.S. 1, 67 S.Ct. 504 (1947).....10, 12

McCollum v. Board of Education, 333 U.S. 203, 68 S.Ct. 461 (1948)..... 9

Page

School District of Abington v. Schempp,
374 U.S. 203, 83 S.Ct. 1560 (1963) 9, 10, 12, 13

State ex rel. Clithero v. Showalter,
159 Wash. 519, 293 Pac. 1000 (1930) 10

State ex rel. Dearle v. Frazier,
102 Wash. 369, 174 Pac. 435 (1918) 10

Constitutional Provisions

United States Constitution,
First Amendment 3, 5, 12

Fourteenth Amendment 3, 5, 12

Washington State Constitution,
Article I, Section 11 4

Article IX, Section 4 4

Statutes

R.C.W. 28.77.130 3

28 U.S.C. 1257(3) 2

IN THE

Supreme Court of the United States

October Term 1967

No. .....

CALVARY BIBLE PRESBYTERIAN CHURCH OF SEATTLE,
a non-profit corporation;
TACOMA BIBLE PRESBYTERIAN CHURCH,
a non-profit corporation;
REV. THOMAS W. MILLER and REV. HAROLD WEBB,
Petitioners,

v.

BOARD OF REGENTS OF THE UNIVERSITY OF WASHINGTON,
Respondent.

PETITION FOR WRIT OF CERTIORARI
To the Supreme Court of the State of Washington

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners, CALVARY BIBLE PRESBYTERIAN CHURCH OF SEATTLE, TACOMA BIBLE PRESBYTERIAN CHURCH, REV. THOMAS W. MILLER and REV. HAROLD WEBB, pray that a Writ of Certiorari issue to review the judgment of the Washington State Supreme Court in the above entitled case, the opinion of which was filed on the 28th day of December, 1967, and which became a final judgment on March 8, 1968, according to remittitur of the Washington State Supreme Court dated March 8, 1968.

REFERENCES TO THE RECORD

By stipulation of the parties and with the cooperation of the Washington State Supreme Court, arrangements have been made to forward a certified copy of the entire record to the Supreme Court.

References to the record are made herein as follows:

Portion of Record Cited	*Abbreviation Used*
Brief of Appellants	(R, BA, —)
Statement of Facts (verbatim record of the proceedings before the trial court)	(R, St. —)
Transcript (record of pleadings, motions, orders, etc., filed with the trial court)	(R, Tr. —)
Supplemental Transcript (record of argument of counsel and ruling of trial court on pretrial motions.	(R, Supp Tr. —)

OPINIONS BELOW

The opinion of the Washington State Supreme Court is reported in 72 W.D.2d 900, and printed in Appendix B hereto commencing at page A-7. The opinion of the Superior Court for King County is unreported and is printed in Appendix D, *infra*, pp. A-27 to A-33.

JURISDICTION

The opinion of the Washington State Supreme Court was filed on December 28, 1967 (Appendix B, *infra*, pp. A-7 to A-24). Petition for Rehearing was denied and the judgment of the court below became final on March 8, 1968. The remittitur issued March 8, 1968, is printed in Appendix C hereto, *infra*, p. A-25. The jurisdiction of the court is invoked under 28 U.S.C. 1257(3). The question of jurisdiction was raised in the court of first instance

and in the appellate court as hereinafter set forth under the heading "Stages at Which Federal Questions Were Raised."

QUESTIONS PRESENTED

1. Does a Bible course at a state institution of higher learning which includes interpretation and study of the religious concepts and ideas contained in the Holy Bible, and which teaches one view of the origin, history and authorship of the Bible to the exclusion of other views, violate the Establishment Clause of the First Amendment as applied to the states by the Fourteenth Amendment to the U.S. Constitution?

2. Is the State of Washington in its educational institutions permitted to establish courses of study in the Bible which blend secular and sectarian instruction in such a manner as to demean the traditional concept of God and the Bible?

3. Do church organizations or their respective congregations have standing to raise the Federal Constitutional issue under the Establishment Clause?

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

The State statute authorizing the Board of Regents of the University of Washington to prescribe the courses of study at the University, Sec. 28.77.130, Revised Code of Washington, is printed in Appendix A, *infra*, p. A-1.

The constitutional provisions involved are as follows:

1. United States Constitution, First Amendment, set forth at Appendix A, *infra*, page A-3.

2. United States Constitution, Fourteenth Amendment, set forth in Appendix A, *infra*, page A-3.

3. Washington State Constitution, Article I, Section 11, set forth in Appendix A, *infra*, page A-5.

4. Washington State Constitution, Article IX, Section 4, set forth in Appendix A, *infra*, page A-6.

STATEMENT OF THE CASE

1. Pleadings and Prior Proceedings

This action was brought by the Calvary Bible Presbyterian Church of Seattle and the Tacoma Bible Presbyterian Church, and by their respective pastors individually and as representatives of their congregations to restrain the Board of Regents of the University of Washington from continuing a regular course of instruction in the Bible. The Superior Court for King County issued an order to show cause why the course should not be discontinued. Respondent moved to dismiss the complaint upon the ground that it did not state a cause of action and that the petitioners did not have standing to sue. The court ruled prior to trial that the individual plaintiffs had standing to maintain the action but that the churches did not have standing to sue. Following a six-day trial, the trial court found that the course as presented was not slanted in a religious direction, was not designed to induce particular religious beliefs nor to advance particular religious interests, and that the course did not amount to religious indoctrination by teaching from a fixed theological position to promote a particular theology. Based upon these findings the trial court concluded that the study of the Bible did not violate Article I, Section 11 or Article IX, Section 4 of the Washington State Constitution, nor did it violate the

Establishment Clause of the First and Fourteenth Amendments of the United States Constitution.

The majority opinion of the Supreme Court of the State of Washington affirmed the decision of the trial court, despite its prior holdings that the state constitution forbid the use of any public funds or public property for instruction in the Bible. The state supreme court also held that the individual petitioners had standing to maintain the action but that the church groups were not proper parties to raise the issues presented.

2. Stages at Which the Federal Questions Were Raised

The Federal Questions were raised in the original Complaint (R, Tr. 86), the Amended Complaint (R, Tr. 45), by pretrial motions (R, Supp. Tr. 2-10), by objections during the trial (R, St. 280), by post-trial argument and by Assignment of Error to the Supreme Court of the State of Washington (R, BA 8-15) including, among other assignments, the following:

> "8. The court erred in entering Conclusion of Law No. 2, as follows (Tr. 21):
>
> "'Neither the First Amendment of the Constitution of the United States nor those provisions of the Constitution of the State of Washington found in Article I, Section 11 (Amend. 34), and Article IX, Section 4, prohibit the defendant from offering, as a part of its curriculum, a course which studies the Bible for its literary and historic qualities when presented objectively as part of a secular program of education.
>
> "9. The court erred in entering Conclusion of Law No. 4, as follows (Tr. 23):
>
> "'The teaching of English 390 at the University

of Washington does not violate the Establishment Clause or the Free Exercise Clause of the First Amendment of the Constitution of the United States as it applies to the states through the Fourteenth Amendment.'

"14. The trial court erred in dismissing the two church groups as plaintiffs and in refusing to admit evidence as to the complaints of said church groups (Tr. 56, St. 280).

"15. The trial court erred in ruling prior to trial that appellants had the burden to show that the course is "slanted in a religious direction, or designed to induce a particular religious belief, or to advance particular religious interests, or that the course amounts to religious indoctrination by teaching from a fixed theological position to promote a particular theology (Tr. 55)."

The questions were specifically considered and rejected by both the trial court and the Supreme Court.

3. Essential Facts

The facts established at the trial concerning the nature of the course are not in dispute. The course is regularly taught at the University of Washington, a public institution of higher learning operated by the State of Washington and supported by public funds. The course is taught by regularly appointed members of the faculty of the University, the prescribed text being the Revised Standard Version of the Holy Bible (R, Tr. 50; R, St. 568), although on occasion the King James Version of the Bible is selected as a text (R, Tr. 17; R, St. 562).

That the Bible is a uniquely religious book concerned almost entirely with the relationship of God and man was admitted by all of the prominent theologians and church leaders who testified on behalf of both petitioners

and respondents, including the teachers of the course.[1]

The professors who taught the course admitted that inquiry as to the religious content and meaning of the Bible constituted the main purpose in teaching the course (R, St. 27, 52-55, 598; R, St. 565-566), it being agreed that the students had a strong desire to examine and consider the basic religious beliefs contained in the Bible (R, St. 571-578).

The evidence was uncontradicted that the course as presently taught includes consideration of the authorship of the various books of the Bible and interpretation of the origin, development and significance of the Bible as a religious book (R, Tr. 13, 21). The testimony of the various Bible scholars, church leaders and theologians who testified established conclusively that within Christendom today there are two opposing views regarding the nature and origin of the Bible, and that these views are a matter of religious belief and controversy. The traditional view is that the Bible is the Revealed Word of God; the contrary modernist view presented in the course challenges the genuineness and divine authority of the Bible (R, St. 118-157, 378-380).

It was uncontradicted that the creeds of many churches designate the Bible both as the Word of God and the sole authority in matters pertaining to religion. It was further admitted that the split within Christendom brought about by the two opposing religious views regarding the nature and authority of the Bible was the cause of the formation of two sets of national and international religious organizations, the traditional view be-

1. Dr. MacRae, President of the Faith Theological Seminary; Dr. Wright, Prof. of Old Testament at Harvard Divinity School; Dr. McIntire, President of International Council of Christian Churches; Dr. Michaelsen, University of California; Prof. Fowler and Prof. Irmscher, University of Washington (R, AB 4).

ing represented by the American Council of Christian Churches and the International Council of Christian Churches, and the liberal view taught at the University being represented by the National Council of Churches and the World Council of Churches (R, St. 264-272, 287-290, 320-323, 645-654).

The witnesses had no difficulty identifying the particular view taught at the University, and the dissent in the state supreme court opinion was compelled to conclude that the course constituted a direct attack upon the religious belief of those who profess that the Bible is the Revealed Word of God (App. B, A-19). Bible scholars of both Old and New Testament testified that the course was obviously slanted toward the so-called liberal or modernist view (R, St. 129-134, 157, 232-238). The primary witness for respondent also admitted that much of the factual material presented in the study outline for the course was representative of the particular view of the Bible held by the instructor and himself (R, St. 382, 384-385, 407, 410-415, 418, 433), and Professor Fowler, the instructor, himself an elder of the United Presbyterian Church (R, St. 18), admitted his own inclination toward the modernist view (R, St. 54, 61-62, 90-91), and admitted that he taught the course in his own Sunday School in the same manner as was presented in the course (R, St. 20-21, 64, 111-112).

The outline written by the most frequent teacher of the course as a study guide for the course likewise presents the modernist view, setting forth asserted facts incompatible with Moses being the author of The Pentateuch (R, St. 124-127, 166-170, 201, 339, 640); Isaiah

as author of the Book of Isaiah (R, St. 138, 162-164); Daniel as author of The Book of Daniel (R, St. 237, 639); Paul, the Apostle, as author of the Pastoral Epistles (R, St. 232-233); Peter as author of First Peter and Second Peter (R, St. 234-235); and David as author of the Psalms (R, St. 237-238).

That these controversial religious matters caused concern among the students was clear from the testimony of one of the students, a portion of which is set forth in the dissenting opinion (App. B, p. A-20). The instructors also admitted conflict with students over interpretation of traditional passages in the Bible (R, St. 85, 88-90), and at least one of the instructors admitted that he instructed the students that the story of Adam and Eve in the Bible is a myth (R, St. 558-560).

Despite these facts, the trial court and the majority of the court below found that the course was taught in an "objective manner as part of a secular program of education," and that it does not promote a particular theology for purposes of religious indoctrination, and is not slanted in a religious direction or designed to induce any particular beliefs or to advance any particular religious interests or theology (A-16; A-29).

REASONS FOR GRANTING THIS WRIT

1. The decision of the Washington State Supreme Court permits the establishment of religion contrary to all of the previous decisions of this court, including: *School District of Abington v. Schempp*, 374 U.S. 203, 83 S.Ct. 1560 (1963); *Engel v. Vitale*, 370 U.S. 421, 82A S.Ct. 1261 (1962); *McCollum v. Board of Education*, 333 U.S. 203,

68 S.Ct. 461 (1948); and *Everson v. Board of Education*, 330 U.S. 1, 67 S.Ct. 504 (1947).

The decision is particularly startling in view of the previous decisions by the Washington court in *State ex rel. Dearle v. Frazier*, 102 Wash. 369, 174 Pac. 435 (1918), and *State ex rel. Clithero v. Showalter*, 159 Wash. 519, 293 Pac. 1000 (1930), which held that course instruction in the Bible is constitutionally prohibited, regardless of the stated secular purpose of the course and regardless of the non-denominational presentation of the course.

However, in the face of its previous decisions and all case decisions on the doctrine of separation of church and state, the majority of the court concluded that since the course was presented "objectively as part of a secular program of education," it did not violate the constitutional provisions (App. B, A-16, *et seq.*)

The interpretation placed upon *School District of Abington v. Schempp, supra*, is that teaching of the Bible and religious instruction is permissible if it is not slanted toward any particular theological or religious point of view or does not in fact indoctrinate anyone in a particular faith or belief. The interpretation of *Schempp* by the trial court was even more permissive, since it found merely that the course does not promote a particular theology for *purposes of* religious indoctrination (App. D, A-32).

Thus the dicta in the *Schempp* case referring to "study of the Bible or of religion, when presented objectively as part of a secular program of education" has been so interpreted as to reverse the spirit and letter of all previous decisions on the separation of church and state by this

court, as well as the specific holding of the *Schempp* case itself.

2. The case is one of first impression, both as to the teaching of the Bible in a public institution of higher learning, and as to the teaching of a course devoted exclusively to the Bible. No cases were cited by the regents in any of the various arguments below which supported the opinion of the trial court or the Washington State Supreme Court. This novel rule, established without case precedent, therefore sets the guidelines for Bible courses and courses on religion in all public educational institutions in the State of Washington; and the opinion undoubtedly will serve as a model for Bible courses at state institutions of higher learning in all of the states.

3. The decision of the court below authorizes the teaching of secular religion in the public schools. The testimony was uncontroverted that the manner in which the course was taught was in accordance with doctrines promulgated by various churches affiliated with the National Council of Churches.

The dissent in the opinion below had no difficulty concluding that the course involved religious instruction and constituted a direct attack upon the religious beliefs of those who considered the Bible as the Revealed Word of God (App. B, A-19). However, the majority opinion, while admitting that there was conflicting testimony, concluded that since the primary purpose of the course was not indoctrination of religious beliefs, the presentation of a particular religious view did not violate the constitutional prohibitions.

Under the decision of the court below there would presumably be no restriction against specific courses in the Bible presenting solely the views of a particular religion, so long as the courses were authorized by the public institution, presented by members of the faculty, and capable of being considered educational rather than devotional in nature (i.e., so long as the course was not *designed* to indoctrinate students to a particular faith). It is submitted that this interpretation of the Establishment Clause of the First and Fourteenth Amendments is so directly contrary to the holdings of all the previous decisions of this court that the rule set down should be reviewed.

4. The interpretation of the constitutional prohibitions against the establishment of religion by the court below would aid the establishment of *some* religions since it approves the particular religious view being promulgated at the University of Washington. The strict neutrality rule set down in *Everson v. Board of Education,* 330 U.S. 1, 67 S.Ct. 504 (1947), and approved in *School District of Abington v. Schempp,* is thus vitiated since the state government with approval of the court has preferred the modernist Protestant Christian interpretation of the Bible and has disparaged the traditional interpretation of the Holy Scriptures.

In the future applications of the rule, some religious groups would necessarily be aided by permission to teach their doctrine. Since the Board of Regents has the legal authority to hire teachers and prescribe courses of study, the state would have the power to determine what particular religion could or should be taught. The only re-

striction placed upon the manner of teaching religion and the Bible is that it be taught as a regular part of the curriculum and be presented in an objective manner. What would constitute "objective religion" has never been considered by this court, and in view of the dicta in the *Schempp* case referring to the "possible study of the Bible in a secular course of education," this case requires review of the new rule evolved by the Washington State Supreme Court.

Respectfully submitted,

CARTANO, BOTZER AND CHAPMAN
WILLIAM H. BOTZER
Counsel for Petitioners